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REMARKS

Initially, Applicant expresses appreciation for the indication of allowable subject matter. Specifically, that claims 30-32 define over the art of record.

Certain claims were objected to and others rejected under 35 USC 112, 2nd paragraph. Applicant has amended the claims, as indicated and respectfully asserts that these amendments obviate the objections and rejections. With respect to claim 30, Applicant respectfully traverses the rejection. The language in question refers to requests that have been received or have yet to be received ("unreceived") by the implantable medical device. Thus, the monitor(s) is not sending a request that it has yet to receive; rather, it is only transmitting requests to devices that have yet to receive that request. Applicant respectfully requests withdrawal of the rejection.

The remaining claims have been rejected under 35 USC 103(a) as unpatentable over Nappholz in view of Draeger, with certain claims further including additional references. Applicant respectfully traverses.

The presently claimed invention is directed to a remote programming system that include monitors remotely located from a programmer operated by, e.g., a physician. The programmer generates instructions that are sent to and retained by the monitor. Separately, and temporally subsequent an independent communication session is initiated between the monitor and a given IMD. In claim 1, for example, the monitor determines a status of the IMD and only transfers the instructions to the IMD if the status of that device indicates it is safe to do so.

Nappholz is a remote programming system. Despite the Examiner's assertions to the contrary, the RPP acts as no more than a repeater or pass-through device when used in conjunction with the remote console 27. In other words, a telemetry session is initiated between the remote console 2 and the device 12. The Examiner places great weight on the flowchart of FIG. 6 as it indicates that parameters are transmitted to the device 12 in the step after the parameters are transmitted to device (RPP) 14. As implied by the Examiner's

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112 rejection above, a device (14) cannot pass on instructions before receiving them; thus, the presentation of step 250 and 252 are naturally in this order.

Claim 1, for example, recites a monitor that "subsequently conduct[s] a programming telemetry session." Napholz, despite the obvious ordering of the steps is performing a single telemetry session between the remote console and the ICD 12. Note step 244 where ECG data is obtained. This comes from the patient, through the RPP 14 and to the remote console. Likewise, the ICD parameters are uploaded from the ICD to the remote console. Further note Col. 7 lines 7-10 where Napholz states that the RPP "emulates" the wand used with prior art programmers. That is, the remote console is the programmer and the RPP is the immediate, live interconnection between the implanted device and this programmer.

Therefore, despite the noted sequence of the steps, Napholz does not teach transmitting programming instructions to a remote monitor, with the remote monitor then subsequently initiating a telemetry session, the monitor verifying the status/safety of the device and the monitor programming the device. For at least these reasons, no *prima facie* case for obviousness has been established and the rejection must be withdrawn.

The Examiner notes that Napholz fails to teach verifying the status of the IMD. More specifically, Napholz fails to teach having the monitor make such a verification, as this is completely unnecessary and counterintuitive in a situation where "live" programming is occurring via the remote console. Draeger et al. is cited, purportedly to teach this concept. However, this reference has absolutely nothing to do with the programming of implantable medical device and the unique characteristics thereof, let alone remotely programming implantable medical devices. All this reference teaches is that prior upgrading a software package, the previous version of the software package is viewed to make sure the upgrade hasn't already occurred.

Neither reference alone, or in combination teach providing programming instructions for an implantable medical device to a remote monitor. Then, at

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some subsequent time having the monitor initiate or engage in a telemetry session with the IMD; determine if the instructions are safe or compatible with the IMD's current status, and then, if appropriate, programming the IMD. This all occurs without the direct control of the original, initiating programmer that provided the instructions to the monitor.

Applicant respectfully asserts that the references fail to anticipate or render obvious the indicated claims. The other rejections fail for the same or similar reasoning. As such, Applicant respectfully asserts that the present claims are in condition for allowance and notice of the same is earnestly solicited.

Respectfully submitted,

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